STRAITS SETTLEMENTS REPORTS.

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[ORIGINAL CIVIL JURISDICTION]
HOWES, Ag. C.J.
May 18, 1937.

ONG BOON HIM & ANOR.....Plaintiffs

v.

TAN OH TEE & ANOR.....Defendants

[SINGAPORE SUIT No. 784 of 1931]

Arbitration—judgment ordering reference to—award—date from which interest to run—Civil Procedure Code, s. 568.

By judgment dated the 20th November 1931 the Court referred to the arbitration of two persons one to be appointed by each party with power to appoint an umpire in case of disagreement between them the amount of compensation to be paid by the plaintiffs to the defendants for the improvement done to the land held by the defendants. The arbitrators, however, disagreed and the matter was referred, under an order of the Court, to an umpire therein named. The umpire made two awards the last of which was dated the 5th January 1933. In an application by the plaintiffs which, *inter alia*, raised the question whether or not the sums awarded carried interest and, if so, whether the interest should run from the date of the judgment or from the dates of the respective awards,

Held, that the judgment did not carry interest but that interest was payable from the date of the last award at the statutory rate of 8 per cent per annum.

SUMMONS in CHAMBERS adjourned into Open Court by Order of Court dated the 23rd April 1937.

Davies for the plaintiffs.

Goho for the defendants.

Cur. Ad. Vult.

HOWES, AG. C.J.—On the first prayer in this summons there is no dispute between the parties; consequently, the order will be in terms of prayer 1.

On prayer 2A, the opinion of the Court is sought "as to whether or not the Judgment of this Honourable Court dated the 20th of November, 1931 and the Awards of the Umpire carries interest on the sums awarded and if so at what rate and also whether or not the interest should run from the date of the Judgment or from the date of the respective awards."

The judgment shows that the plaintiffs agreed to pay compensation to the defendants in respect of improvement done to the land in question, and, by consent, it was ordered that the amount of compensation to be paid should be referred to two arbitrators, or in case of disagreement to an umpire to be appointed by them. It was further ordered "that upon payment to the defendants of such compensation as the arbitrators or the umpire would (sic) decide the defendants do forthwith vacate and deliver up possession of the aforesaid piece of land."

The two arbitrators disagreed, and by order of Whitley J., made on the 15th August 1932, Mr. Roland John Farrer was appointed "as umpire to act instead of the Arbitrators in the reference to arbitration ordered in this action with the like power to act as agreed in the submission to arbitration by the Plaintiffs and Defendants dated the 29th day of January, 1932 and that the costs of this application be costs in the cause."

The submission to arbitration of the 29th January, 1932 is not before me; so I assume that its terms are immaterial to the present question.

Pursuant to the judgment of the 20th November 1931, the umpire on the 30th October 1932, gave his award in favour of the plaintiffs for two sums, $1,603.20 and $1,008 respectively; and on the 5th January 1933, by a supplemental award awarded a further sum of $1408.00, making a total amount of compensation of $4,019.20. None of these awards is before me, but as the total amount of the compensation is not disputed, I assume that nothing turns on their contents.

In view of the judgment of the 20th November 1931, this was a reference under order of Court by consent, within section 15 (a) of the Arbitration Ordinance (Cap. 12), the whole cause or matter having been referred to the arbitrators, or, in the event of their disagreement, to the umpire for trial.

Under section 16 (2) of the above ordinance, "The report or award of any special referee or arbitrator on any such reference shall, unless set aside by the Court or a Judge, be equivalent to the judgment of a Judge."

Under the judgment of the 20th November 1931, assuming that no grounds were disclosed for setting aside the award, nothing remained for the Court to do. The judgment laid down the method by which the amount of compensa- was to be ascertained; and proceeded to order the defendants, on payment to them of the compensation, forthwith to vacate and deliver up possession of the land. It even dealt with the agreed costs; and no liberty to apply was reserved. As soon as the umpire had finally decided the amount of the compensation, namely, when he gave his final award on the 5th January 1933, it was the duty of the plaintiffs to pay the defendants that amount; and as soon as this was done, the defendants were bound by the judgment to vacate the land.

Mr. Davies, for the plaintiffs, states that the land was in January 1933 in the occupation of sub-tenants of the defendants, so that it would have been impossible for the defendants to comply with the judgment; and it is agreed

that it was not until August 1936 that the defendants succeeded in evicting the sub-tenants. What would have happened if the plaintiffs had paid the defendants, and the latter were unable to deliver up possession of the land, is a contingency with which I am not concerned. The fact remains that the plaintiffs, even now, have not paid the compensation.

Mr. Davies contends that as the defendants were unable to give vacant possession, and remained in possession reaping the profits of the land until August 1935, they cannot be entitled to interest until after that date.

In January 1933 when the umpire made his final award, the Civil Procedure Code was in force; and by section 568 of that Code, every judgment debt carried interest at 8% or such lesser rate as the Court directed, from the date of judgment until the judgment was satisfied.

Since an award on a reference under order of Court is the equivalent of a judgment; it follows that it carries the same interest as a judgment.

As I have already stated, the question whether the defendants were or were not able to give possession does not arise in this summons.

The only questions are: (1) whether the Judgment of the 20th November, 1931, and the award carries interest? (2) if so, at what rate, and (3) whether or not the interest should run from the date of the Judgment or from the dates of the respective awards.

Mr. Goho has referred to the case of *Ashover Fluor Spar Mines, Limited* v. *Jackson* [(1911) 2 Ch. 355] in which the facts were very similar to those in the present suit.

In that case, an action for trespass was compromised on terms that it should be referred to a special referee to ascertain the damages. There, however, the matter was referred to the referee for report only; and a further order was necessary for the Court to adopt the report. It was held that interest on the sum certified ran from the date of the referee's report.

Applying the same principles to the present case although the "Judgment" of 20th November, 1931, is so called; in my view, it could more properly be described as an order for reference for trial, containing ancillary orders depending on the result. In fact, the Judgment was inchoate, and awaited the report of the arbitrators or umpire to perfect it.

I therefore hold that the Judgment itself does not carry interest; but the award of the umpire, being the equivalent to a Judgment, does carry interest.

I find that interest is payable from the date of the last award of the umpire, viz. from 5th January, 1933, and since no reduction in the statutory rate of interest has been asked for, the rate will be 8 per cent per annum until the amount of compensation is paid.

With regard to prayer 2, as the result of my ruling on prayer 2A, the order on prayer 2 will be in the terms thereof but varied by the insertion, after the figure "$4,019.20" of the words, "together with interest at the rate of 8% per annum from the 5th January 1933 till date of payment."

With regard to costs of this summons, the defendants having succeeded, the plaintiffs must pay the defendants' costs. Liberty to apply.

Solicitors for the Plaintiffs—*Aubrey Davies & Co.*

Solicitors for the Defendants—*S. C. Goho & Co.*

[APPELLATE CRIMINAL JURISDICTION]

HORNE, J.

April 24, 1937.

S. R. SALMON ..... **Appellant**

v.

REX ..... **Respondent.**

[SINGAPORE MAGISTRATE'S APPEAL No. 43 of 1936]

Traction Engines and Motor Cars Ordinance (Cap. 214), s. 16—Power to make rules—Rule 4—Reasonableness—Certainty—Implied repeal by Regulation 25 made under the Traffic Regulation Ordinance (Cap. 213)—Cross Roads—Statutory naming of streets—Convictions against the weight of the evidence.

Prinsep Street, Singapore, continues from Middle Road to Bras Basah Road. Shortly before it enters Bras Basah Road, Selegie Road comes into it at an angle and Dhoby Ghaut leaves it (on the same side) at an angle. At the time of the matters complained of the appellant and an Inspector of the S.S. Police were driving their respective cars towards the junction of Prinsep Street and was making for Dhoby Ghaut. The Inspector in question was coming along Selegie Road and making for Bras Basah Road via Prinsep Street. By reason of their positions the two cars were bound eventually to cross each other's respective courses. Shortly after the drivers saw each other both cars stopped, but there was a conflict as to their then exact positions. There was no accident, but the appellant was charged with:—(1) That he on or about the 25th day of February 1936 at 7-30 p.m. at Prinsep Street junction with Selegie Road while driving motor car No. S-3485, did fail to slow down when approaching the cross road to a speed which was reasonable with regard to the traffic likely to be encountered on such cross road and that he thereby committed an offence under Rule 4, Section 16 Ordinance 129 [now the Traction Engines and Motor Cars Ordinance (Cap. 214)] and (2) That he on the 25th day of February 1936 at 7-30 p.m. on the same occasion failed to drive the said motor car on that part of a public road or street situate between the centre and the left hand kerb, and that he thereby committed an offence under Rule 8 made under Section 3 Ordinance 19 of 1933 [now the Traffic Regulation Ordinance (Cap. 213)].

Prior to the actual hearing of the appeal the appellant filed a motion asking for leave to raise legal points which had not been raised in the Court below and for